IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 156 of 1999
In
SPECIAL CIVIL APPLICATION No. 933 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

CYANIDES & CHEMICALS COMPANY - Appellant(s)

Versus

NARENDRABHAI BALUBHAI PATEL & 1 - Defendant(s)

==========

Appearance :
MR KEYUR GANDHI for NANAVATI ASSOCIATES for Petitioner No(s).: 1.
MR DIPAK R DAVE for Respondent No(s).: 1.
MR TR MISHRA for Respondent No(s).: 2.
==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 11/08/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Present is an appeal by the dissatisfied employer against the order dated 3.12.1998 passed in Special Civil Application No. 933 of 1998, whereunder, the learned Single Judge has confirmed the award dated 10.10.1997 made by the Industrial Tribunal, Surat in Complaint I.T. No. 6 of 1992 so far as it relates to the reinstatement of the respondents is concerned, but has reduced back wages from 100% to 25%. According to the appellant, reinstatement part is justifiable, but the back wages should not be awarded. It is submitted that in view of the proved misconduct, the learned Single Judge was not justified in awarding 25% back wages.

2. The allegations made against the respondents and two others were that one Mr. Kantharia, when was awaiting arrival of the bus, four persons appeared at the bus stand, intimidated the said Mr. Kanthariya and caused him certain injuries. Placing reliance upon clause 21(b)(xxxxi), a charge sheet was issued, stating inter alia, that threatening or intimidating a workman or an

employee within or near the premises of an industrial establishment was a misconduct.

3. After the charge sheet was served, two of the miscreants/delinquents tendered their apology and they were immediately reinstated. The present respondents were also offered reinstatement, but they refused to accept the same. It is not known to anybody that on what conditions reinstatement was offered.

4. After completion of the inquiry, the workmen were awarded capital punishment and they were terminated.

5. Being dissatisfied with the award of the punishment, the workmen opted for a Reference. The learned Industrial Tribunal granted proper opportunity to the parties to submit their pleadings and lead evidence. After hearing the parties, it made an award in favour of the respondents holding that as no misconduct was proved, it ordered reinstatement with 100% back wages.

6. Being aggrieved by the said award, the appellant filed the above Special Civil Application. The learned Single Judge observed that in view of the reinstatement of others, the respondents were entitled to reinstatement, but the learned Single Judge reduced 100% back wages to 25% only observing that the bus stand appeared to be near to the factory premises and

he accordingly observed that misconduct was proved.

7. Mr. Gandhi, learned counsel for the appellant submits that the misconduct was proved and as the alleged incident had taken place near the premises of the establishment, the back wages should not have been allowed. Mr. Dave, learned counsel for the respondent has opposed the appeal, submitting, inter alia, that neither in the charge sheet nor in the pleadings, nor in the evidence, it was brought before the learned Industrial Tribunal or before the learned Single Judge that what was the distance between the factory premises and the bus stand. His submission is that simply because one could walk from the factory premises to bus stand, it would not make the bus stand nearer to factory premises.

8. After hearing the parties, we have gone through the complete records. We must immediately observe that in the charge sheet, not even a single word has been stated that Mr. Kanthariya was either threatened or intimidated within or near the premises of the industrial establishment. The charge sheet simply stated that when Mr. Kanthariya was waiting arrival of the bus at the bus stand, four persons appeared on the spot and intimidated him or beat him. In absence of

the details of the distance to show that the incident took place near the premises of the industrial establishment, the charge itself was vague. It is further to be seen that in the departmental proceedings, no finding was recorded that what was the distance between the industrial establishment and the bus stand. Even in the written statement, the appellant company did not prefer to give the details of the distance. In the oral evidence, nobody said that what was the distance between the industrial establishment/factory premises and the bus stand.

9. For application of Clause 21b(xxxxi), it was necessary for the establishment to prove that the alleged incident of threatening or intimidation to any workman or employee took place within or near the premises of the industrial establishment. In absence of such evidence, it would not be possible for any Court to record a finding that the alleged incident took place near the premises of the industrial establishment. As the findings recorded by the learned Single Judge have not been challenged by the respondents workmen, we would not say anything about the findings recorded by the learned Single Judge, but would hold that there is no scope for any interference in the matter. The

learned Single Judge was justified in reducing 100% back wages to 25% back wages. We find no reason to interfere in the matter. The appeal is dismissed.

[R.S. GARG, J.]

[RAVI R. TRIPATHI, J.]

pirzada/-